

FILED BY CLERK

APR 29 2010

COURT OF APPEALS
DIVISION TWO

IN THE COURT OF APPEALS
STATE OF ARIZONA
DIVISION TWO

THE STATE OF ARIZONA,)	2 CA-CR 2009-0393-PR
)	DEPARTMENT B
Respondent,)	
)	<u>MEMORANDUM DECISION</u>
v.)	Not for Publication
)	Rule 111, Rules of
ISRAEL JOAQUIN ALVAREZ,)	the Supreme Court
)	
Petitioner.)	
_____)	

PETITION FOR REVIEW FROM THE SUPERIOR COURT OF PIMA COUNTY

Cause No. CR-20013408

Honorable Howard Fell, Judge

REVIEW GRANTED; RELIEF DENIED

Israel Alvarez

Florence
In Propria Persona

B R A M M E R, Judge.

¶1 After a jury trial, petitioner Israel Joaquin Alvarez was convicted of first-degree murder, based on a theory of felony murder, and aggravated robbery. The trial court sentenced him to concurrent prison terms of life and 6.5 years. This court affirmed the convictions and the sentences on appeal. *State v. Alvarez*, 210 Ariz. 24, ¶¶ 1, 24, 107 P.3d 350, 352, 356 (App. 2005), *supp. op.*, 213 Ariz. 467, ¶ 2, 143 P.3d 668, 669 (2006).

Alvarez then sought post-conviction relief pursuant to Rule 32, Ariz. R. Crim. P. Absent a clear abuse of discretion, we will not disturb the trial court's ruling. *See State v. Swoopes*, 216 Ariz. 390, ¶ 4, 166 P.3d 945, 948 (App. 2007). We see no such abuse here.

¶2 In his petition for post-conviction relief and amended petition, Alvarez contended trial counsel had been ineffective in failing to explain adequately to him a plea agreement the state had offered, including the fact that accepting the plea offer would have limited his sentencing exposure to fifteen years' imprisonment and in conveying to him the strength of the state's case. He also asserted that *State v. Garnica*, 209 Ariz. 96, 98 P.3d 207 (App. 2004), was a significant change in the law as contemplated by Rule 32.1(g). In that case, Division One of this court held that a defendant can be criminally culpable under a theory of accomplice liability for offenses that can be committed with mens rea of recklessness. *Id.* ¶ 23. Alvarez contended that, based on *Garnica*, trial counsel should have explained to him that he could have supplied an adequate factual basis for the reduced charge of manslaughter under a theory of accomplice liability.

¶3 Additionally, Alvarez challenged his sentence. He suggested that, because parole is not available to a person serving a life term of imprisonment, he must be resentenced so that it is clear he is eligible for release to community supervision after serving twenty-five years of the life term. Based on these claims, Alvarez contended the state should be compelled to reoffer the previous plea agreement. "Alternatively," he argued, he should be given the opportunity to enter into the same plea agreement because "he was unaware that a life sentence was, in effect, a natural life sentence and not just 25 years flat"

¶4 Addressing each claim in a thorough, well-reasoned minute entry, the trial court identified the claims Alvarez had raised, resolved them correctly, and denied relief without an evidentiary hearing. No purpose would be served by rehashing that ruling in its entirety here; instead, we adopt the court's ruling. *Cf. State v. Whipple*, 177 Ariz. 272, 274, 866 P.2d 1358, 1360 (App. 1993). Alvarez has not sustained his burden on review of establishing the court abused its discretion.

¶5 The petition for review is granted. But for the reasons stated herein, relief is denied.

/s/ J. William Brammer, Jr.

J. WILLIAM BRAMMER, JR., Judge

CONCURRING:

/s/ Peter J. Eckerstrom

PETER J. ECKERSTROM, Presiding Judge

/s/ Garye L. Vásquez

GARYE L. VÁSQUEZ, Judge